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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO.1162 OF 2005

PETITIONER PLAINTIFF		Loknath, S/o Nankiram Adhariya, aged about 63 years, Agriculturist, R/o Village Hadha, Tahsil & Dist. Janjgir, at present R/o Vill. Pandhai, Tahsil & District Bilaspur (Chhattisgarh)
	versus	
RESPONDENTS DEFENDANTS	1.	Pitamber, S/o Hari Singh Adhariya, aged about 58 years, Agriculturist, R/o Village Hadha, Tahsil & Dist. Janjgir – Champa (Chhattisgarh)
	2.	Mst. Rambai, W/o Patela Suryavanshi, aged about 48 years, Village
	3.	Malikram, Son of Guha Suryavanshi, aged about 38 years,
		Both residents of Village Singhaldeep, Tahsil & Dist. Janjgir – Champa (Chhattisgarh)

Present : Mr. Sanjay K. Agrawal, learned counsel for the petitioner.

ORAL ORDER
(Passed on 5th January, 2006)

Notwithstanding the service of notice, the respondents remain unrepresented. Heard learned counsel for the petitioner – plaintiff. The petitioner has instituted a civil suit for possession of suit land mentioned in para 1 of the plaint for declaration that he is the owner and title-holder of the suit land and for permanent injunction. The respondent No.1, in his written statement dated 4-10-1988, has stated that, the agreement dated 30-10-1983 and another agreement dated 1-12-1983 and family arrangement dated 25-4-1984 were signed by the petitioner – plaintiff. In view of the above defence raised by the defendant – respondent No.1, the

petitioner – plaintiff made an application under Section 45 of the Indian Evidence Act asserting that he has not signed the aforesaid documents and those documents have been forged and fabricated and, therefore, he prayed the trial Court to refer those signatures to be examined by handwriting expert. The said application is dismissed by the learned trial Judge on the ground that though an opportunity to make application under Section 45 of the Indian Evidence Act was given to the plaintiff – petitioner on 7-4-1993, he did not make use of the opportunity. What is contended in the writ petition is that the fact that the reason given by the trial Court to reject application is factually incorrect, and in fact, on 7-4-1993, the case was not posted nor any opportunity was given to the petitioner to make application under Section 45 of the Indian Evidence Act. In support of the above contention, the petitioner has appended certified copy of the entire order-sheets at page 40 of the material papers. The case was listed before the trial Judge on 8-1-1993 and that day the case was adjourned to 18-6-1993. The certified copy of the order-sheets does not show that the case was listed before the learned trial Judge on 7-4-1993. Be that as it may, in the context of the case and particularly the fact that by virtue of the interim order, the matter is pending in this Court for all these months. In the result, the writ petition is allowed. The impugned order is set aside and the interlocutory application is allowed as prayed for. No costs.

Sd/-
Chief Justice

G.Singh